

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION
CIVIL ACTION NO. 3:13-CV-489-MOC-DCK**

RICHARD D. ANDERSON,

Plaintiff,

v.

**UNITED STATES LIFE INSURANCE
COMPANY, AMERICAN MEDICAL
ASSOCIATION INSURANCE AGENCY,
INC., and AMERICAN GENERAL LIFE
INSURANCE COMPANIES,**

Defendants.

**MEMORANDUM AND
RECOMMENDATION**

THIS MATTER IS BEFORE THE COURT on “Defendants’ Motion To Dismiss Plaintiffs’ First Amended Complaint” (Document No. 13) filed September 23, 2013. This motion has been referred to the undersigned Magistrate Judge pursuant to 28 U.S.C. § 636(b), and immediate review is appropriate. Having carefully considered the motion, the record, and, applicable authority, the undersigned will deny the motion as moot.

Plaintiff filed a “Second Amended Complaint” (Document No. 17) on October 7, 2013. On October 9, 2013, noting the consent of Defendants, the undersigned granted Plaintiff’s “Request For Reconsideration Of Plaintiff’s Motion To Substitute Second Amended Complaint For Amended Complaint” (Document No. 20) and “Plaintiff’s Motion To Substitute The Second Amended Complaint For Amended Complaint” (Document No. 16). See (Document No. 21).

It is well settled that a timely-filed amended pleading supersedes the original pleading, and that motions directed at superseded pleadings may be denied as moot. Young v. City of Mount Ranier, 238 F. 3d 567, 573 (4th Cir. 2001) (“The general rule ... is that an amended

pleading supersedes the original pleading, rendering the original pleading of no effect.”); see also, Colin v. Marconi Commerce Systems Employees' Retirement Plan, 335 F.Supp.2d 590, 614 (M.D.N.C. 2004) (“Earlier motions made by Defendants were filed prior to and have been rendered moot by Plaintiffs’ filing of the Second Amended Complaint”); Turner v. Kight, 192 F.Supp. 2d 391, 397 (D.Md. 2002) (quoting 6 Charles Alan Wright, Arthur R. Miller & Mary Kay Kane, Federal Practice and Procedure § 1476 (2d ed. 1990) (“A pleading that has been amended ... supersedes the pleading it modifies Once an amended pleading is interposed, the original pleading no longer performs any function in the case.”); Brown v. Sikora and Associates, Inc., 311 Fed.Appx. 568, 572 (4th Cir. Apr. 16, 2008); and Atlantic Skanska, Inc. v. City of Charlotte, 3:07-CV-266-FDW, 2007 WL 3224985 at *4 (W.D.N.C. Oct. 30, 2007).

FOR THE FOREGOING REASONS, the undersigned respectfully recommends that “Defendants’ Motion To Dismiss Plaintiffs’ First Amended Complaint” (Document No. 13) be **DENIED AS MOOT**.

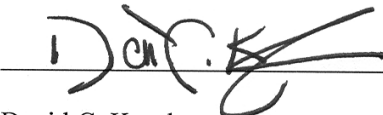
TIME FOR OBJECTIONS

The parties are hereby advised that pursuant to 28 U.S.C. § 636(b)(1)(C), and Rule 72 of the Federal Rules of Civil Procedure, written objections to the proposed findings of fact, conclusions of law, and recommendation contained herein may be filed within **fourteen (14) days** of service of same. Responses to objections may be filed within fourteen (14) days after service of the objections. Fed.R.Civ.P. 72(b)(2). Failure to file objections to this Memorandum and Recommendation with the District Court constitutes a waiver of the right to *de novo* review by the District Court. Diamond v. Colonial Life, 416 F.3d 310, 315-16 (4th Cir. 2005). Moreover, failure to file timely objections will preclude the parties from raising such objections on appeal. Diamond, 416 F.3d at 316; Page v. Lee, 337 F.3d 411, 416 n.3 (4th Cir. 2003);

Snyder v. Ridenhour, 889 F.2d 1363, 1365 (4th Cir. 1989); Thomas v. Arn, 474 U.S. 140, 147-48 (1985), reh'g denied, 474 U.S. 1111 (1986).

IT IS SO RECOMMENDED.

Signed: October 16, 2013



David C. Keesler
United States Magistrate Judge

